

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1321 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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DEVRAJ G NAVANI

Versus

JITENDRAKUMAR S SHAH  
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Appearance:

None present for Petitioner

None present for Respondent No. 1  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/04/2000

ORAL JUDGEMENT

#. The present revision application has been filed by the original defendant of Regular Civil Suit No.74/81. The aforesaid suit was filed by the respondent plaintiff for getting the possession of the suit premises from the defendant on the ground of nonpayment of the rent. It is

the case of the plaintiff in the said suit that, he is the owner of one shop being Shop No.12 situated in Vankaner Town. The said shop was rented to the defendant at the rate of Rs.50/- per month. That the defendant has not paid any rent from 25.4.1978, therefore, he was served with the demand notice on 15.3.1981. Still the defendant failed to pay up the arrears of rent inspite of the demand notice. The plaintiff, therefore, filed the aforesaid suit for getting the decree for possession as well as for the arrears of rent by approaching the Civil Judge (Junior Division), Vankaner.

#. The defendant appeared in the suit and submitted the written statement at Exh.17. It was pointed out in the written statement that Rs.50/- is excessive rent. He denied about the arrears of rent. According to him, he has invested some amount in repairing the shop and the said amount is required to be adjusted towards the arrears of rent. In that view of the matter, it was contended that, the suit for the arrears of rent was not bonafide.

#. The learned trial Judge framed various issues arising out of the pleadings and after recording the evidence and after hearing the arguments of both the sides, decreed the suit of the plaintiff for possession. The learned trial Judge also passed the decree for Rs.1950/- towards the arrears of rent.

#. The aforesaid decree of the trial court was challenged by the defendant - tenant by way of Civil Appeal No.14/84. The aforesaid appeal was heard by the learned Assistant Judge, Rajkot at Morbi who by his order dated 13.3.1985 dismissed the said appeal.

#. The petitioner - tenant has filed the present revision application against the order of the appellate court by which his appeal was dismissed.

#. At the time of hearing of this civil revision application, advocate of the petitioner as well as the advocate of the opponent, both are absent. In that view of the matter, revision application is required to be decided in their absence on its merit.

#. I have gone through the judgments of both the courts below as well as the R & P of the case. The question about issuance of the suit notice is considered by the appellate court in para 9 of its judgment. The evidence was given on behalf of the plaintiff by his power of attorney holder. However, the plaint was signed by the

plaintiff himself. As per the evidence of the plaintiff, the defendant was in arrears of the rent from 25.4.1978 to 24.5.1981 for a period of 37 months. Demand notice was served on the defendant which was received by him. It has been found by the appellate court that the defendant has admitted that the suit notice was served upon him. He, however, did not comply with the suit notice nor paid any rent within one month after receiving the suit notice. It has been found that, not a single amount has been deposited in the court. Regarding the dispute of the standard rent, it was found by the appellate court that the defendant himself had applied for fixation of the standard rent by way of Civil Misc.Application No.12/81 which is at Exh.21 on the record. That application was dismissed. Even, otherwise within one month of the receipt of the suit notice, the defendant has not raised any dispute of the standard rent. It seems that the same is taken for the first time in the written statement.

#. In that view of the matter, and in view of the judgment of the Apex Court reported in 31(1) GLR 209, if no dispute of the standard rent is taken within one month and if no rent is paid within one month from the receipt of the suit notice, the decree under section 12(3)(a) of the Bombay Rent Act is required to be passed. In that view of the matter, the present case clearly falls under section 12(3)(a) of the Bombay Rent Act as the tenant who was in arrears of the rent for more than six months did not pay the rent within one month from the receipt of the suit notice. There is, therefore, no substance in the say of the tenant regarding adjusting the amount of some repair work which he might have carried out in the suit premises. The tenant could have obtained the cost certificate as provided under the Rent Act if any amount he has spent for repairing work. There was, therefore, no question of adjustment of any amount towards any such repair. It seems that, before the appellate court, arguments were advanced on behalf of the tenant that, he was not given reasonable opportunity for leading the evidence. The learned appellate Judge in para 9 of his judgment has discussed the said point. The learned appellate Judge has found that the tenant has not led any evidence about the expenses which he might have incurred for repairing the suit premises and that he has not stepped into the witness box. Even otherwise the tenant could have followed the procedure of Section 23(2) of the Bombay Rent Act. Therefore, simply because he might have spent the amount *epso facto* is not the ground for adjusting the said amount from the arrears of the rent. Therefore also, there is no substance in the contention

taken by the tenant in the courts below regarding incurring some expenses towards the repairing and adjusting the said amount towards the arrears of rent.

#. In that view of the matter, I do not find any substance in civil revision application. Civil Revision Application is accordingly dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

##. Since the advocate of neither side is present, office is directed to send the copy of the order to the respective parties forthwith for their information. Since the petitioner is not present either personally or through his advocate, it is not possible even to consider the question of giving time for vacating the suit premises. If, after receipt of the order of this court, if any such application is made, the court may consider the same on its own merits.

(P.B.Majmudar,J.)  
(pathan)